

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

RAMON ARMAS BORROTO, JR,

Plaintiff,

vs.

Case No. 5:04cv165-RH/WCS

**OFFICER T. McDONALD,
OFFICER PATE, OFFICER SPATE,
and SERGEANT McKENZIE,**

Defendants.

_____ /

ORDER

By court order issued on October 15, 2004, service of the *pro se* Plaintiff's § 1983 civil rights complaint, doc. 1, was directed. Doc. 12. Two executed returns of service were filed on behalf of Defendants Pate and McKenzie, docs. 13, 16, but two unexecuted returns were filed as to the remaining two Defendants: McDonald and Spate. Docs. 14, 15. An order was issued, doc. 17, directing Plaintiff to provide greater clarification so that service could be effected. Plaintiff has responded by filing a motion for leave to file an amended complaint. Doc. 18. Fed. R. Civ. P. 15, which governs amended and supplemental pleadings, provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. P. 15(a). In this case, no Defendant has yet filed a responsive pleading.

Thus, the Clerk of Court has appropriately filed the amended complaint as document 19 and Plaintiff's motion, though technically unnecessary, is granted.

Plaintiff must now provide five copies of that document for service on the five Defendants. Plaintiff shall do so expeditiously so that service can be carried out within 120 days as provided for in Rule 4(m).

Accordingly, it is **ORDERED**:

1. Plaintiff's motion to amend the amended complaint, doc. 18, is **GRANTED**.
2. Plaintiff shall have until **January 14, 2005**, in which to submit five identical copies of his "amended complaint" for service on the named Defendants.
3. **Failure to comply with the order of this court may result in a recommendation of dismissal of this action.**
4. The Clerk of Court shall return this file to the undersigned upon receipt of Plaintiff's service copies or no later than January 14, 2005.

DONE AND ORDERED on December 14, 2004.

s/ William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE